

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Wasatch)	
Investments, L.C., for change of Electric)	Case No. EO-2008-0031
Supplier.)	

**WASATCH INVESTMENTS, LC RESPONSE TO AMERENUE'S MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

I. Background

This action seeks relief from the Missouri Public Service Commission to allow Wasatch Investments, L.C. (Wasatch) to receive electric Service from Cuivre River Electric Cooperative, Inc. (Cuivre River) instead of its current electric supplier AmerenUE (Ameren). On April 30, 2008 Ameren filed a Motion to Dismiss for lack of Subject Matter Jurisdiction.

II. Undisputed Facts

Previously all parties agreed to a Stipulation of Facts. (Exhibit 1)

III. Argument and Conclusion

Missouri Law provides an alternative to change an electrical provider. Section 393.106.2 RSMo. 2000 states that the Commission "may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential," and this situation does not involve a rate differential. See also 4 CSR 240-2.060(15). In this case, Wasatch seeks a change from a cooperative to a regulated utility, which Wasatch believes may take place under this statute.

In *In the matter of the application of Gary Hudlemeyer for change of Electric Supplier* (EO-2002-1105) a similar fact pattern existed. In *Hudlemeyer*, Gary Hudlemeyer sought a change of electrical provider on his property because it was

currently not being serviced by the “franchised electric service provider in the City of Smithville. Acquila’s present electric facilities are located several miles away from the site of the new residence.” *Verified Statement of Aquila, Inc.* (EO-2002-1105) Platte-Clay Electric Cooperative had an electrical service facility located in front of the building site. Although Acquila was the authorized provider it was currently not providing any electricity to the house site.

Similar to this cause, Ameren has no means of providing electrical service to the above property owned by Wasatch. However, Cuivre River does have means to service the property because it maintains electricity to the surrounding parcels. Further Smithville, the city in the above cause has a population greater than 1,500 persons, similarly as the City of O’fallon exceeds the population of 1,500 persons.

In the above case the Staff agreed the Commission “may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential.” *Staff Recommendation* (EO-2002-1105). This Honorable Court subsequently granted the change of electrical provide.

Based on case president by this Court, authorized by the Staff recommendation it appears clear that subject matter jurisdiction can be found in Wasatch’s application for change of service provider based on public interest coupled with the ruling in the Matter of Gary Hudlemeyer.

Wasatch prays this court will not dismiss this action for lack of subject matter jurisdiction and its cause will be heard.

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Stipulation of Facts

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE), Staff of the Missouri Public Service Commission (Staff), Office of Public Counsel (OPC), Wasatch Investments, L.C. (Wasatch) and Cuivre River Electric Cooperative, Inc. (Cuivre River), and for their Stipulation of Facts, state as follows:

1. Wasatch is the owner of real property located at 1665 Kemmar Court, within the city limits of O'Fallon, Missouri.
2. AmerenUE is an electric utility subject to the jurisdiction of the Missouri Public Service Commission (Commission). § 386.250 RSMo.
3. Cuivre River is a rural electric cooperative, organized pursuant to Chapter 394 of the Revised Statutes of Missouri.
4. Cuivre River has the power to "...generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percent of the number of its members." § 394.080.1(4) RSMo. 2000.
5. A "rural area" is defined as "...any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants." § 394.020(3) RSMo. 2000.

Exhibit 1

6. The City of O'Fallon has a population of 46,169, according to the US Census Bureau's 2000 census report as published in the 2005-2006 edition of the Missouri State Manual.

7. The City of O'Fallon is not a "rural area" as defined by § 394.020(3) RSMo. 2000.

8. Currently, Cuivre River does serve customers within the city limits of O'Fallon. These customers are only within those areas of the City of O'Fallon that are either the subject of one or more Territorial Agreements entered into between Cuivre River and AmerenUE and approved by the Commission or were in existence prior to such area being annexed by the City of O'Fallon. For these services the City of O'Fallon requires Cuivre River to pay, pursuant to O'Fallon Municipal code Section 635.020, a license tax equal to 5% of the gross receipts from such electric service.

9. Currently, Cuivre River has no Territorial Agreement with any other electric supplier that encompasses the Kemmar Court location within the city limits of O'Fallon and does not desire at this time or anticipate in the future, entering into any such agreement encompassing the Kemmar Court location.

10. The Kemmar Court property is located within the certified service territory of AmerenUE.

11. AmerenUE has a franchise agreement with the City of O'Fallon.

12. Cuivre River does not have a franchise agreement with the City of O'Fallon.

Exhibit 1

13. The Missouri anti-flip-flop statutes, and the exceptions contained therein, are applicable only after an electric corporation or cooperative "commences" providing electric service to a facility. § 393.106.2 and § 394.315.2, RSMo 2000.

14. Wasatch is currently not receiving electric service at the Kemmar Court location from any electric provider.

15. AmerenUE and Cuivre River have not entered into and have no plans to enter into a territorial agreement which would include the Kemmar Court location.

16. Cuivre River has distribution lines that bisect the Kemmar Court location.

17. AmerenUE does not currently have the facilities in place to serve the Kemmar Court location without obtaining additional easements and a permit from the Missouri Department of Natural Resources.

18. Neither AmerenUE nor Cuivre River is providing temporary service to Applicant at the Kemmar Court location.

Exhibit 1